

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ABN CORPORATION, et al.,  
Plaintiffs,

v.

GROUPE PELM INTERNATIONAL  
CORPORATION, et al.,  
Defendants.

Case No. 23-cv-00004-RFL (LJC)

**ORDER REGARDING MOTION TO  
COMPEL**

Re: Dkt. No. 162

Plaintiffs move to compel production of documents that Defendants Victoria Briant and her law office (collectively, Briant) withheld based on assertions of attorney-client privilege with respect to defaulted Defendants Christian Pellegrini and Groupe PELM International Corporation (collectively, the GP Defendants). Dkt. No. 162. Plaintiffs rely primarily on the crime-fraud exception to privilege, and on the GP Defendants' default to establish that exception by admission. The Court held a hearing on September 16, 2025 and thereafter issued an Order for supplemental briefing. Dkt. No. 174. Among other issues, the Court directed the parties to address whether Briant's communications with the GP Defendants were privilege even absent any application of the crime-fraud exception, because it appeared that Briant acted primarily as a business agent or mere conduit for the GP Defendants' communications with Plaintiffs' and their attorney. *Id.* at 5–7.<sup>1</sup> For the reasons discussed below, Plaintiffs' Motion is DENIED WITHOUT PREJUDICE as to communications that specifically seek or convey legal advice, and GRANTED as to all other documents predating this litigation that Briant withheld based on assertions of privilege.

The parties' briefs on the Motion to Compel addressed questions of exceptions to and

<sup>1</sup> To present the Court's full analysis of this issue in a single document for the convenience of the reader, this Order repeats relevant portions of that previous Order.

1 waiver of the attorney-client privilege, but did not meaningfully address the underlying question  
 2 of whether the privilege applies in the first place to the communications at issue. *See, e.g.*, ECF  
 3 No. 165 (Opp’n) at 9–16. Plaintiffs may have erred in failing to raise this issue, but it is ultimately  
 4 Briant’s burden as the party invoking the privilege to make a prima facie showing that it applies.  
 5 *See Costco Wholesale Corp. v. Superior Ct.*, 47 Cal. 4th 725, 733 (2009).

6 “[I]n a civil case, state law governs privilege regarding a claim or defense for which state  
 7 law supplies the rule of decision.” Fed. R. Evid. 501. California law therefore applies to issues of  
 8 privilege in this litigation, at least absent any showing that the law of some other state should  
 9 apply. *See Holley v. Gilead Scis., Inc.*, No. 18-cv-06972 JST (JSC), 2021 WL 2371890, at \*2  
 10 (N.D. Cal. June 10, 2021) (applying California choice-of-law rules to conclude that California  
 11 privilege law applied in a case with “factual connections to multiple states,” where no party  
 12 introduced evidence of a conflict of laws or another state’s governmental interest in applying its  
 13 own law).

14 Under California law, the attorney-client privilege is governed by statute and applies to  
 15 confidential communications between client and lawyer during the course of the attorney-client  
 16 relationship. *See* Cal. Evid. Code §§ 911, 954, 952. “The party claiming the privilege has the  
 17 burden of establishing the preliminary facts necessary to support its exercise.” *Costco*, 47 Cal. 4th  
 18 at 733. “Once that party establishes facts necessary to support a prima facie claim of privilege,”  
 19 then the privilege is presumed to apply, and “the opponent of the claim of privilege has the burden  
 20 of proof to establish the communication was not confidential or that the privilege does not for  
 21 other reasons apply.” *Id.*

22 “[T]o determine whether a communication is privileged, the focus of the inquiry is the  
 23 dominant purpose of the relationship between the parties to the communication.” *Clark v.*  
 24 *Superior Ct.*, 196 Cal. App. 4th 37, 51 (2011). Where the “dominant purpose of the relationship  
 25 between the parties to the communication was one of attorney-client, the communication is  
 26 protected by the privilege.” *Id.* “[T]he relevant inquiry is not the content of the communication  
 27 but is instead the relationship of the communicators.” *Id.* at 52. If “the communications were  
 28 made during the course of an attorney-client relationship”—as opposed to a relationship with

some other “dominant purpose”—then “the communications, including any reports of factual material, would be privileged, even though the factual material might be discoverable by some other means.” *Costco*, 47 Cal. 4th at 740. Even when an attorney-client relationship is established, however, “the inquiry turns on . . . the link between the content of the communication and the types of communication that the attorney-client privilege was designed to keep confidential. For a communication to be privileged, it must be made for the purpose of the legal consultation, rather than some unrelated or ancillary purpose.” *L.A. Cnty. Bd. of Supervisors v. Superior Ct.*, 2 Cal. 5th 282, 297 (2016) (adopting the reasoning of a concurring opinion in *Costco*).

“It is settled that the attorney-client privilege is inapplicable where the attorney merely acts as a negotiator for the client, gives business advice or otherwise acts as a business agent.” *Zurich Am. Ins. Co. v. Superior Ct.*, 155 Cal. App. 4th 1485, 1504 (2007) (citation omitted). By merely “conveying the client’s position to a contracting party,” an attorney “acts as a business agent,” such that neither privilege nor work product protection applies to communications with the client made for that purpose. *See also Aetna Cas. & Sur. Co. v. Superior Ct.*, 153 Cal. App. 3d 467, 475 (1984).

Here, Briant describes her role as follows:

By any measure, Attorney Briant had an exceedingly limited involvement in the underlying transaction, which Plaintiffs cannot and do not actually deny. Again, GP and Pellegrini (collectively “GP Defendants”) retained Attorney Briant “in this transaction for only two very narrow issues”: (1) to verify proof of funds and (2) to facilitate communications with Attorney Williams concerning an inspection of the product. [ECF 126-1, ¶ 20.]

It was only after GP and RS Medical had already negotiated the terms of the Commercial Invoice and, and after Pellegrini confirmed the \$50,000 deposit was wired and had cleared into the GP account at Scotia Bank on November 15, 2022, that Pellegrini first engaged Attorney Briant to handle the first item: to contact Attorney Williams . . . to verify that RS Medical had the [funds] to complete the transaction.

ECF No. 165 at 3–4 (first set of brackets in original; internal quotation marks omitted). She goes on to explain how that she engaged in further communications with Willaims at Pellegrini’s direction. *Id.* at 4–5. “Most responses from Attorney Briant [in an exchange of messages with

Williams] consisted of informing Attorney Williams that she was merely a conduit for conveying his messages to Pellegrini, and that she was otherwise waiting on instructions from Pellegrini in facilitating the inspection.” *Id.* at 4.

Based on that description, Briant’s primary role in the transaction appears to have been as a business agent or “mere conduit,” not providing legal services. Despite the Court’s previous invitation for the parties to “attach evidence as necessary” to their supplemental filings, ECF No. 174 at 9, Briant included no new evidence with her supplemental brief, ECF No. 179.

Instead, she merely asserts that she was not a “negotiator” because the terms of the transaction had already been agreed at the time of her involvement, and that she acted as an “arms-length attorney” based on Pellegrini’s previous declaration that he and Briant “have a method of verifying a buyer’s funds” that they “followed . . . here,” *id.* at 5 & n.3 (apparently quoting in part ECF No. 109,<sup>2</sup> ¶ 4). Pellegrini’s declaration, in the portion quoted by Briant, explains that his and Briant’s “method” consisted of “asking the buyer’s legal counsel to represent verbally to Ms. Briant and in a confirming writing (such as an email or text) that the buyer has sufficient clean, clear, liquid, unencumbered and transferable funds of provable noncriminal origin on deposit in the United States and designated for the transaction to complete the transaction.” ECF No. 179 at 5; ECF No. 109, ¶ 4.

Briant concedes “that *some* of her communications with Pellegrini—for instance, communications where she was merely passing along messages exchanged with Attorney Williams—may be subject to production,” but suggests that Pellegrini’s declaration supports a conclusion that her communications were largely privileged. To the contrary, nothing about Pellegrini’s description of Briant’s role indicates that it would have involved the sort of confidential consultations traditionally protected by the attorney-client privilege. Instead, it appears to confirm that Briant acted essentially as a conduit or business agent, even if not specifically as a negotiator.

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<sup>2</sup> Briant’s brief cites ECF No. 90, which is not a declaration but instead Groupe PELM’s third-party complaint against Plaintiffs’ attorney Aaron McKown and his law firm, and which does not include the language at issue.

Discrete communications seeking or providing legal advice might still be privileged. *See L.A. Cnty. Bd. of Supervisors*, 2 Cal. 5th at 297 (noting the importance of the contents of communications). It is conceivable, for example, that Briant might have advised Pellegrini on potential legal significance of Plaintiffs’ attorney’s representations, and such communications would be privileged (at least absent a showing of an exception). But the same cannot be said for Briant and her clients’ discussions that related more generally to her communicating with a partner in a putative contract about the source of its funds. Those discussions relate to a fundamentally business-oriented rather than legal function, and are not privileged.

Moreover, given that Briant’s primary role in the transaction appears to have been as business agent or conduit, any background communications between her and her clients about the nature of the transaction or the products at issue also are not privileged, unless made specifically in the context of seeking or providing legal advice. *See Costco*, 47 Cal. 4th at 735–36 (looking to “the client’s dominant purpose in retaining the attorney”); *Clark*, 196 Cal. App. 4th at 51 (looking to the “dominant purpose of the relationship”); *see also Wisk Aero LLC v. Archer Aviation Inc.*, No. 21-cv-02450-WHO (DMR), 2023 WL 2699971, at \*4 (N.D. Cal. Mar. 29, 2023) (holding under federal common law that “[n]o privilege can attach to any communication as to which a business purpose would have served as a sufficient cause, i.e., any communication that would have been made because of a business purpose, even if there had been no perceived additional interest in securing legal advice”).

It appears that Briant has over-designated documents as privileged based on the unsupported view that her role in the transaction was primary that of an attorney rather than a business agent. Plaintiffs’ Motion to Compel is GRANTED as to all responsive documents Briant withheld on the basis of privilege, except for: (1) communications that specifically seek or convey legal advice; and (2) documents created after the start of this litigation.<sup>3</sup> Briant is ORDERED to produce documents consistent with this Order, and to serve a revised privileged log

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<sup>3</sup> Briant previously represented the GP Defendants in this case, thus establishing a traditional attorney-client relationship at that time. The Court’s subsequent determination that she must be disqualified from such representation due to a conflict of interest does not undermine any privilege that attached during that time.

1 specifically supporting any remaining claims of privilege, no later than November 6, 2025.  
2 Consistent with the Court’s previous Order, to the extent that Briant asserts responsive  
3 documents are outside of her custody or control, she “must provide Plaintiffs with a declaration  
4 that describes with specificity her efforts to review the material that she possesses to determine  
5 whether she has responsive records,” and if she “does not have additional relevant, responsive,  
6 non-privileged material in her control, she must make such an attestation under penalty of perjury”  
7 by the same deadline. *See* ECF No. 174 at 8.

8         This Order does not resolve the question of whether the crime-fraud exception applies to  
9 any documents that might otherwise remain privileged—i.e., communications specifically seeking  
10 or conveying legal advice. Plaintiffs’ arguments for the crime-fraud exception rest either on  
11 relatively thin circumstantial evidence, or on an apparently novel legal argument that a client’s  
12 default can serve to establish the exception through admission for the purpose of ongoing  
13 litigation against that client’s attorney. As a matter of prudence, the Court withholds judgment on  
14 those potentially fraught issues until after Briant has produced documents consistent with this  
15 Order, which may either obviate the need for further production or provide a clearer record to  
16 determine whether Plaintiffs can establish a prima facie showing of the crime-fraud exception.  
17 Plaintiffs Motion to Compel is therefore DENIED WITHOUT PREJUDICE as to communications  
18 that specifically seek or convey legal advice, except that Briant must produce a revised privilege  
19 log supporting such claims of privilege.

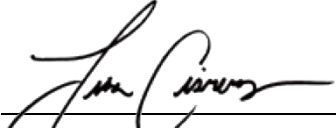
20         If any dispute remains regarding Briant’s production in response to this Order, her  
21 revised privilege log, or Plaintiffs’ argument for an exception to privilege, the parties shall meet  
22 and confer as required by this Court’s Standing Order, and file a further joint discovery letter brief  
23 no later than November 20, 2025.

24         That letter must attach the privilege log entries for any documents that Plaintiffs seek  
25 compel Briant to produce despite a continuing assertion of privilege, and may attach any other  
26 evidence the parties believe is relevant, so long as the parties specifically cite and discuss in the  
27 letter any evidence they wish the Court to consider. Evidence filed elsewhere in the record need  
28 not be refiled, so long as it is cited by docket entry and page number, and discussed with sufficient

specificity to explain its significance

**IT IS SO ORDERED.**

Dated: October 23, 2025



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LISA J. CISNEROS  
United States Magistrate Judge